

## 21 C.J.S. Courts § 85

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### Courts

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### II. Jurisdiction of Courts


#### G. Discretion of Court to Exercise or Decline Jurisdiction

#### 2. Forum Non Conveniens as Basis for Declining Exercise of Jurisdiction

## § 85. Public and private interests as factors for forum non conveniens

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Courts](#)  40.7 to 40.9

**The forum non conveniens determination as a basis for declining the exercise of jurisdiction involves considering the balance of private and public concerns or interests and whether it weighs in favor of retaining jurisdiction or strongly favors dismissal.**

In considering the application of principles of forum non conveniens as a basis for declining the exercise of jurisdiction,<sup>1</sup> the court undertakes a balancing of private and public concerns or interests in retaining the action, which is generally the court's second step,<sup>2</sup> after determining that a suitable alternative forum exists.<sup>3</sup> The court does not weigh the private interest factors against the public interest factors<sup>4</sup> but must evaluate the total circumstances of the case in determining whether the balance of factors strongly favors dismissal in favor of the alternative forum.<sup>5</sup> The balance of private and public concerns must strongly favor the motion to dismiss<sup>6</sup> to overcome the preference and presumption favoring the plaintiff's choice of forum.<sup>7</sup>

The private interest factors for the application of forum non conveniens include the plaintiff's choice of forum,<sup>8</sup> the location of the primary parties;<sup>9</sup> the convenience of the parties and witnesses;<sup>10</sup> the relative ease of access to sources of proof<sup>11</sup>—whether testimonial, documentary, or real evidence;<sup>12</sup> the availability and cost of compulsory process to secure attendance of unwilling witnesses;<sup>13</sup> the cost of obtaining attendance of willing witnesses;<sup>14</sup> the possibility of viewing the premises, if appropriate;<sup>15</sup> the practical burden plaintiffs will face in filing a new action after dismissal for forum non conveniens;<sup>16</sup> other practical considerations that make a trial easy, expeditious, and inexpensive;<sup>17</sup> and the enforceability of any judgment obtained.<sup>18</sup>

For purposes of forum non conveniens dismissal, the relevant public interest factors are as follows: (1) the administrative difficulties flowing from court congestion;<sup>19</sup> (2) the local interest in having localized controversies decided at home;<sup>20</sup> (3) the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action;<sup>21</sup> (4) the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law;<sup>22</sup> (5) the pendency or nonpendency of a similar action or actions in another jurisdiction;<sup>23</sup> and (6) the unfairness of burdening citizens in an unrelated forum with jury duty.<sup>24</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

In determining whether the balance of public and private interests sufficiently favors granting a defendant's forum non conveniens motion, a relevant private interest factor is the extent to which the defendant may seek to implead or join third parties and the jurisdictional and logistical ease with which that can be done in the alternative forum compared to plaintiff's chosen forum. Rules Civ.Proc., Rule 29. [Espinoza v. Evergreen Helicopters, Inc.](#), 359 Or. 63, 376 P.3d 960 (2016).

Trial court abused its discretion in finding that private interest factors supported dismissal based on forum non conveniens of products liability action brought by patient against medical device manufacturer, distributor, and marketer; although defendants argued that care providers would be critical for determining injuries, nothing in record indicated that providers would not attend trial in Pennsylvania, marketer had employees in Pennsylvania, who were potential witnesses, although Pennsylvania was far from France, where device was designed, all domestic venues were far, and defendants had Pennsylvania offices, and application of law concerns were irrelevant because parties agreed that law of patient's home state, Texas, likely applied. [McConnell v. B. Braun Medical Inc.](#), 2019 PA Super 310, 221 A.3d 221 (2019).

Balance of parties' private interests and state's public interests predominated in favor of nonresident plaintiffs' personal-injury and wrongful-death action, which arose from explosion and fire at natural gas compression facility in Louisiana, being brought in Louisiana, for purposes of forum non conveniens statute, although plaintiffs alleged that defendants maintained their principal places of business in Texas, where injuries and deaths at issue all were sustained in Louisiana by individuals performing work in Louisiana, most witnesses were located in Louisiana, physical evidence was stored in Louisiana, litigating in Texas prevented possibility of viewing premises, and Louisiana had particularly strong public interest in having claims tried in forum accessible to its residents. [Tex. Civ. Prac. & Rem. Code Ann. § 71.051\(b\)\(5\)](#). [In re Transcontinental Gas Pipeline Company, LLC](#), 542 S.W.3d 703 (Tex. App. Houston 14th Dist. 2017).

Public interests court must consider in ruling on motion to dismiss on basis of forum non conveniens include: administrative difficulties and burden on court in plaintiff's chosen forum, unfairness of imposing expense of trial and burden of jury duty on residents of community with little or no connection to controversy, interest in having localized controversies decided at home, and choice-of-law issues, including whether court will be required to apply its own law, or that of another jurisdiction. [Lund v. Lund](#), 2022 WY 2, 501 P.3d 1222 (Wyo. 2022).

## [END OF SUPPLEMENT]

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### Footnotes

1 § 82.

- 2 Cal.—Investors Equity Life Holding Company v. Schmidt, 233 Cal. App. 4th 1363, 183 Cal. Rptr. 3d 219 (4th Dist. 2015).  
  
Wash.—Lisby v. PACCAR, Inc., 178 Wash. App. 516, 316 P.3d 1097 (Div. 1 2013).  
  
Tex.—Brenham Oil & Gas, Inc. v. TGS-NOPEC Geophysical Company, 472 S.W.3d 744 (Tex. App. Houston 1st Dist. 2015).
- 3 § 83.
- 4 Ill.—Wilder Chiropractic, Inc. v. State Farm Fire and Cas. Co., 2014 IL App (2d) 130781, 382 Ill. Dec. 781, 13 N.E.3d 194 (App. Ct. 2d Dist. 2014).
- 5 Ill.—Wilder Chiropractic, Inc. v. State Farm Fire and Cas. Co., 2014 IL App (2d) 130781, 382 Ill. Dec. 781, 13 N.E.3d 194 (App. Ct. 2d Dist. 2014).  
  
Or.—Espinoza v. Evergreen Helicopters, Inc., 266 Or. App. 24, 337 P.3d 169 (2014) review allowed, 357 Or. 143, 350 P.3d 201 (2015).  
  
**A.L.R. Library**  
Doctrine of forum non conveniens: assumption or denial of jurisdiction of action involving matrimonial dispute, 55 A.L.R.5th 647.  
Inconvenience of forum as ground for declining jurisdiction under sec. 7 of the Uniform Child Custody Jurisdiction Act (UCCJA), 21 A.L.R.5th 396.
- 6 D.C.—Garcia v. AA Roofing Co., LLC, 125 A.3d 1111 (D.C. 2015).  
  
Ill.—Wilder Chiropractic, Inc. v. State Farm Fire and Cas. Co., 2014 IL App (2d) 130781, 382 Ill. Dec. 781, 13 N.E.3d 194 (App. Ct. 2d Dist. 2014).  
  
N.Y.—Thor Gallery at South DeKalb, LLC v. Reliance Mediaworks (USA) Inc., 131 A.D.3d 431, 15 N.Y.S.3d 766 (1st Dep't 2015).  
  
Wash.—Lisby v. PACCAR, Inc., 178 Wash. App. 516, 316 P.3d 1097 (Div. 1 2013).
- 7 § 86.
- 8 D.C.—Garcia v. AA Roofing Co., LLC, 125 A.3d 1111 (D.C. 2015).  
  
Ill.—Wilder Chiropractic, Inc. v. State Farm Fire and Cas. Co., 2014 IL App (2d) 130781, 382 Ill. Dec. 781, 13 N.E.3d 194 (App. Ct. 2d Dist. 2014).
- 9 Utah—Diversified Striping Systems, Inc. v. Kraus, 2014 UT App 287, 341 P.3d 932 (Utah Ct. App. 2014).
- 10 D.C.—Garcia v. AA Roofing Co., LLC, 125 A.3d 1111 (D.C. 2015).  
  
Ill.—Wilder Chiropractic, Inc. v. State Farm Fire and Cas. Co., 2014 IL App (2d) 130781, 382 Ill. Dec. 781, 13 N.E.3d 194 (App. Ct. 2d Dist. 2014).  
  
Okla.—Tucker v. Cochran Firm-Criminal Defense Birmingham L.L.C., 2014 OK 112, 341 P.3d 673 (Okla. 2014).  
  
**Oppressiveness and vexation out of proportion**  
R.I.—Kedy v. A.W. Chesterton Co., 946 A.2d 1171 (R.I. 2008).
- 11 Del.—Martinez v. E.I. DuPont de Nemours and Co., Inc., 86 A.3d 1102 (Del. 2014), as revised, (Mar. 4, 2014).

D.C.—Garcia v. AA Roofing Co., LLC, 125 A.3d 1111 (D.C. 2015).

Ill.—Saba Software, Inc. v. Deere and Co., 2014 IL App (1st) 132381, 390 Ill. Dec. 456, 29 N.E.3d 85 (App. Ct. 1st Dist. 2014).

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Wash.—Acharya v. Microsoft Corp., 189 Wash. App. 243, 354 P.3d 908 (Div. 1 2015).

12 Ill.—Wilder Chiropractic, Inc. v. State Farm Fire and Cas. Co., 2014 IL App (2d) 130781, 382 Ill. Dec. 781, 13 N.E.3d 194 (App. Ct. 2d Dist. 2014).

**Location of witnesses and documents**

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13 Del.—Martinez v. E.I. DuPont de Nemours and Co., Inc., 86 A.3d 1102 (Del. 2014), as revised, (Mar. 4, 2014).

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14 Tex.—Richardson v. Newman, 439 S.W.3d 538 (Tex. App. Houston 1st Dist. 2014).

Utah—Diversified Striping Systems, Inc. v. Kraus, 2014 UT App 287, 341 P.3d 932 (Utah Ct. App. 2014).

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15 Del.—Martinez v. E.I. DuPont de Nemours and Co., Inc., 86 A.3d 1102 (Del. 2014), as revised, (Mar. 4, 2014).

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16 Utah—Diversified Striping Systems, Inc. v. Kraus, 2014 UT App 287, 341 P.3d 932 (Utah Ct. App. 2014).

17 Del.—Martinez v. E.I. DuPont de Nemours and Co., Inc., 86 A.3d 1102 (Del. 2014), as revised, (Mar. 4, 2014).

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**General practicalities and expenses**

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**Commitment of local judicial resources**

Fla.—Telemundo Network Group, LLC v. Azteca Intern. Corp., 957 So. 2d 705 (Fla. 3d DCA 2007).

**Burden on court for nonlocal matters**

N.Y.—Wild v. University of Pennsylvania, 115 A.D.3d 944, 983 N.Y.S.2d 58 (2d Dep't 2014).

Utah—Diversified Striping Systems, Inc. v. Kraus, 2014 UT App 287, 341 P.3d 932 (Utah Ct. App. 2014).

20 Ill.—Wilder Chiropractic, Inc. v. State Farm Fire and Cas. Co., 2014 IL App (2d) 130781, 382 Ill. Dec. 781, 13 N.E.3d 194 (App. Ct. 2d Dist. 2014).

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Tex.—*Vinmar Trade Finance, Ltd. v. Utility Trailers de Mexico, S.A. de C.V.*, 336 S.W.3d 664 (Tex. App. Houston 1st Dist. 2010).

**Burden of construing foreign law**

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23 Del.—*Martinez v. E.I. DuPont de Nemours and Co., Inc.*, 86 A.3d 1102 (Del. 2014), as revised, (Mar. 4, 2014).

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